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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GREGG B. LESARTRE

Appeal 2016-005513¹
Application 13/809,452
Technology Center 2400

Before ALLEN R. MacDONALD, JOHN P. PINKERTON, and
GARTH D. BAER, *Administrative Patent Judges*.

BAER, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ Appellant identifies Hewlett Packard Enterprise Development, LP, a wholly-owned affiliate of Hewlett Packard Enterprise, as the real party in interest. Appeal Br. 1.

STATEMENT OF THE CASE

This is a decision on appeal, under 35 U.S.C. § 134(a), from the Examiner's final rejection of claims 1–15, which are all the pending claims. Appeal Br. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

BACKGROUND

A. The Invention

Appellant's invention is directed to “a fabric switch.” Abstract. Claims 2 and 11 are representative and reproduced below, with emphasis added to the disputed elements:

2. A fabric switch as recited in Claim 1 further comprising an initialization manager configured to:

activate a link connecting an end node to a port of said switch so as to establish a protocol to which communications over said link are to conform; and

in response to said activating, generate or adjust said location function to correspond to the use of said protocol at that port.

11. A computer product comprising non-transitory storage media encoded with code configured to, when executed by a processor, implement a process including:

determining, for each of plural packets, a location function based on a respective input-port identity of a port at which the respective packet was received such that, a first location function determined for first packets received at a first port is different from a second location function determined for second packets received at a second port;

locating, for each of said plural packets, respective routing information within the respective packet using the respective location function; and

forwarding each of said packets via a respective output port determined using the respective routing information.

Appeal Br. 12, 14 (Claims App. i, iii).

B. The Rejection on Appeal

The Examiner rejects claims 1–15 under 35 U.S.C. § 103(a) as unpatentable over Lyon (US 5,892,924 A; Apr. 6, 1999), in view of DeHaemer (US 2006/0123137 A1; June 8, 2006). Final Act. 3.²

ANALYSIS

A. Obviousness Rejection of Claims 1, 3–6, 8–11, and 13–15

Appellant argues that Lyons and DeHaemer, whether considered individually or in combination, fail to disclose the claimed “location function,” as recited in independent claims 1, 6, and 11. *See* Appeal Br. 6–7; *see also* Reply Br. 2–4. Moreover, Appellant further argues, because the cited references are silent regarding the claimed “location function,” the references do not also disclose “determining, for each of plural packets, a location function based on a respective input-port identity of a port at which the respective packet was received,” and “a first location function determined for first packets received at a first port is different from a second location function determined for second packets received at a second port,”

² The Examiner also rejected claims 11–15 under 35 U.S.C. § 101 as directed to non-statutory subject matter (Final Act. 2), but withdrew the rejection in the Advisory Action dated September 18, 2015. Therefore, this rejection is not before us.

as recited in claim 11, and similarly recited in claims 1 and 6. *See* Appeal Br. 7–8 (emphasis in original); *see also* Reply Br. 4–5.

We do not find Appellant’s argument persuasive. Claim 11 recites “determining . . . a location function based on a respective input-port identity of a port . . . such that, a first location function determined for . . . a first port is different from a second location function determined for . . . a second port.” Claim 11 further recites “locating . . . respective routing information within the respective packet . . . using the respective location function.” Neither the claim, nor Appellant’s specification, further defines or limits the term “location function.”³ Instead, the language of claim 11 merely requires: (a) the claimed “location function” perform the functionality of locating routing information within a packet, where the routing information is subsequently used to forward the packet to an output port; and (b) a claimed “first location function” be determined for a first input port and a claimed “second location function” be determined for a second input port, where the first location function is “different” from the second location function.

We agree with the Examiner that Lyon teaches a switch that locates routing information (e.g., source port and destination port) within a flow

³ Appellant’s specification describes an example embodiment where a location function component uses an input lookup table to determine a location of routing information within a received packet by looking up the location as a function of the port at which the packet was received. *See, e.g.,* Spec. ¶¶ 12, 13, 17, Figs. 3, 4. However, claim 11 does not include language limiting the claims to the disclosed embodiment. *See SuperGuide Corp. v. DirecTV Enters., Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004) (“Though understanding the claim language may be aided by the explanations contained in the written description, it is important not to import into a claim limitations that are not a part of the claim.”).

identifier of a packet and subsequently uses the routing information to forward the packet to an output port, either via routing the packet or switching the packet if a label is attached to the packet. *See* Final Act. 8 (citing Lyon, 9:40–55, 13:14–27, 15:14–19, 15:46–57); *see also* Ans. 2. We further agree with the Examiner that DeHaemer teaches a switch that forwards packets received via specified input ports to specified output ports in accordance with defined protocols, where forwarding characteristics are modified based on the specified routing information. *See* Final Act. 9 (citing DeHaemer ¶ 40); *see also* Ans. 3. We further agree that DeHaemer also teaches the packets comprise specified routing information that defines the aforementioned protocols. *See* Final Act. 9 (citing DeHaemer ¶ 40). Thus, we conclude the combination of the cited references teaches or suggests: (a) the functionality of locating routing information within a packet, where the routing information is subsequently used to forward the packet to an output port; and (b) performing the aforementioned functionality differently for a first input port and a second input port. As such, Appellant’s argument regarding the claimed “location function” does not distinguish the claims from the combination of the cited references.

Appellant also argues the rationale for combining the cited references provided in the Office Action is insufficient to establish a *prima facie* case of obviousness. *See* Appeal Br. 8; *see also* Reply Br. 5–7. As argued by Appellant, Lyon describes a switch that can process packets of different protocols, and therefore, without any modification, Lyon already provides the benefit asserted to be provided by the proposed modification. *See* Appeal Br. 8. We do not find this argument persuasive. The Supreme Court has rejected the rigid requirement of demonstrating a teaching, suggestion,

or motivation to combine references to show obviousness. *See KSR Int'l Co., v. Teleflex Co.*, 550 U.S. 398, 419 (2007). Instead, a rejection based on obviousness only needs to be supported by “some articulated reasoning with some rational underpinning” to combine known elements in the manner required by the claim. *Id.* at 418. While Appellant concedes Lyon describes a switch that can process packets of different protocols, Appellant does not argue Lyons teaches the protocol/port-specific functionality performed by the switch described in DeHaemer (i.e., configuring packets communicated via a specified port to be compatible with a specified protocol). Thus, we agree with the Examiner that the proposed combination of Lyon and DeHaemer would provide the added benefit of the aforementioned protocol/port-specific functionality.⁴ *See* Final Act. 9. Accordingly, the Examiner has articulated reasoning with a rational underpinning for why a person of ordinary skill in the art would have combined the cited references.

Thus, we are not persuaded the Examiner erred in finding that at the time of the invention, the subject matter of independent claims 1, 6, and 11 would have been obvious over the combination of Lyon and DeHaemer. Accordingly, we sustain the Examiner’s rejection of independent claims 1, 6, and 11 under 35 U.S.C. § 103(a). We further sustain the rejection of dependent claims 3–5, 8–10, and 13–15, not argued separately. *See* Appeal Br. 5 (“[f]or the purposes of this Appeal, claims 1, 3–6, 8–11, and 13–15 stand or fall together”).

⁴ Although not required under *KSR*, we note that Lyon’s discussion of different packet protocols also provides a suggestion for the proposed combination of the cited references. *See, e.g.*, Lyon, 15:51 (describing protocol field of a flow identifier).

B. Obviousness Rejection of Claims 2, 7, and 12

Appellant argues that Lyon and DeHaemer, whether considered individually or in combination, fail to disclose “generat[ing] or adjust[ing] [a] location function to correspond to [a] use of [a] protocol at [a] port,” as recited in claim 2, and similarly recited in claims 7 and 12. *See* Appeal Br. 9–10 (emphasis in original). According to Appellant, the cited portion of Lyon fails to disclose a location function or protocol. *See* Appeal Br. 9. Appellant further argues Lyon and DeHaemer are silent regarding generating or adjusting a protocol stack layer (i.e., the asserted location function, as alleged by Appellant), and are further silent regarding generating or adjusting a protocol stack layer in response to activating a link. *See* Reply Br. 7–8.

We do not find Appellant’s argument persuasive. We agree with the Examiner that the combination of Lyon and DeHaemer teaches the claimed “location function” for the reasons previously discussed above. We also agree with the Examiner that the combination of Lyon and DeHaemer teaches the claimed “protocol” as DeHaemer discloses the switch ports being compatible with one or more protocols. *See* Ans. 4 (citing DeHaemer ¶ 22). We further agree with the Examiner that Lyon teaches establishing default virtual channels between an upstream node and a downstream node and subsequently performing the functionality of the claimed “location function”) (i.e., locating routing information within a packet, where the routing information is subsequently used to forward the packet to an output port). *See* Final Act. 5.

Thus, we are not persuaded the Examiner erred in finding that, at the time of the invention, the subject matter of claims 2, 7, and 12 would have

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been obvious over the combination of Lyon and DeHaemer. Accordingly, we sustain the Examiner's rejection of claims 2, 7, and 12 under 35 U.S.C. § 103(a).

DECISION

We affirm the Examiner's rejection of claims 1–15 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv)

AFFIRMED